

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3723 OF 1983

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

PATEL BHARATBHAI GORAKBHAI & ORS.
VERSUS
STATE OF GUJARAT & ORS.

Appearance:

MR ASIM PANDYA for petitioners
MR JM THAKORE Advocate General with
MR MG DOSHIT for respondents No.1, 2 & 3

Coram: S.K. Keshote,J
Date of decision:3.3.97

C.A.V. JUDGMENT

Heard learned counsel for parties.

2. The petitioners, in all 43, filed this Special Civil Application before this Court and prayer has been made by them for quashing and setting aside the Circular dated 20th June 1983, annexure 'D'. Further prayers have been made for direction to the respondents, permanently restraining them from either terminating the services of the petitioners (except petitioners No.17, 40 and 41) or degrading them to the inferior post of Mukardam.

3. The facts in brief of the case, are that the petitioners were engaged as Karkoons in the Irrigation Scheme relating to Narmada Dam. Having apprehension that their services are likely to be terminated or they are likely to be degraded to inferior post of Mukardam, on the basis of Circular dated 20th June 1983, they filed this Special Civil Application. In the Special Civil Application, annexure 'A' at page No.14, the petitioners have given out the date of their employment. This Special Civil Application has come up for admission before this Court and this Court has been pleased to issue notices to respondents and interim relief in terms of para 17(d) has been granted. Thereafter this petition was admitted and interim relief was ordered to be continued.

4. Reply to Special Civil Application has been filed by respondents. In para 6 of the affidavit of the respondents dated 21st November 1988, af...

D.R. Shah, Executive Engineer, Narmada Project Rockfill Dykes Division, it is stated that petitioners No.3, 8, 9, 11 to 13, 17, 20, 33, 35 to 37 and 39 to 43 have already left the job of their own. It is also stated that petitioners Nos. 4, 5, 15, 16, 18, 24, 25, 29, & 38 have been accommodated on other projects, under the respondent No.1. It has further been stated that rest of the petitioners have been continued on daily wages pursuant to the order made by this Court though the construction at sites at which they were engaged is long since completed. List of those persons has been given at page 37 of reply, which reads as under:

Details of persons retained due to injunction given by this Hon'ble High Court in the N.P. Rockfill Dykes Division, Kevadia Colony, though the works under this division are completed.

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Sr. Sr.No. Name Post

No. as per held
SCA

1. 1. Shri Bharatbhai Gorakhbhai Daily
Wages
Karkoon.
 2. 2. Shri Bhagubhai Himmatbhai Tadvi -do-
 3. 6. Shri Prahladbhai Hirabhai Patel -do-
 4. 7. Shri Kirit Rasiklal Pathak -do-
 5. 10. Shri Rameshbhai Ramabhai Tadvi -do-
 6. 14. Shri Vikrambhai Laljibhai Tadvi -do-
 7. 19. Shri Somabhai Gorjibhai Tadvi -do-
 8. 21. Shri Balkrishna Kanjibhai Tadvi -do-
 9. 22. Shri Jashvantsinh Gulabsinh Solanki -do-
 10. 23. Shri Kamalsinh Mathurbhai Baria -do-
 11. 26. Shri Niranjanbhai Ravjibhai Amin -do-
 12. 27. Shri Ashokkumar Ramsinh Parmar -do-
 13. 28
 14. 30. Shri Ashokkumar Kanchanlal Panchal -do-
 15. 31. Shri Karmendrasinh Kesarsinh Raj. -do-
 16. 32. Shri Prabatsinh Nanabhai Dabhi -do-
 17. 34. Shri Bhagwanbhai Muljibhai Tadvi -do-
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5. From the facts which have come on record in the reply, it is not in dispute that the petitioners were engaged on daily wages. The averments made by respondents in the affidavit have not been controverted by petitioners and as such the same are to be accepted. In view of this averment, the writ petition of the petitioners No. 3, 8, 9, 11 to 13, 17, 20, 33, 35 to 37 and 39 to 43 is dismissed. Similarly, the writ petition of petitioners No.4, 5, 15, 16, 18, 24, 25, 29 and 38

also stands dismissed as they have been accommodated on other projects under respondent No.1. So the controversy now only survives so far as the petitioners No.1, 2, 6, 7, 10, 14, 19, 21, 22, 23, 26, 27, 28, 30, 31, 32, & 34 are concerned. These persons were appointed on daily wages and they have been continued in the services as stated by respondents, due to injunction given by this Court, in the Narmada Project Field Dikes Division, Kevadia Colony. The respondents are continuing these petitioners despite of the fact that the work under the division has already been completed. But this affidavit of respondents is of the year 1988 and nothing has been brought on record, both by petitioners or by respondents, what during all these years has transpired. Not only this, the respondents have also not brought on record any material to show that where these petitioners have been engaged and are working till date. Arguments in the Special Civil Application have been heard by this Court on 24th January 1997 and the order was kept C.A.V. On conclusion of arguments, the learned counsel for respondents have given out that they will bring to the notice of this Court how these persons have been dealt with in later years, i.e. whether they are working and further whether their services are required or not, in the next week. I waited for one more week, but the respondents have not given anything to the Court. As held by the Hon'ble Supreme Court, in the cases of State of Himachal Pradesh v. Ashwani Kumar & Ors., and in the case of State of Himachal Pradesh v. Nodha Ram & Ors., both reported in JT 1996(1) SC Pg.214 & 220 respectively, appointment on daily wages is not an appointment to a post according to rules. Further the project at which these petitioners were engaged had also come to an end and as such, even if the termination is held to be made without complying the provisions of Section 25F of the I.D. Act, 1947, in the given facts of this case, the order of reinstatement of these persons, now in view of the fact they were continued in services pursuant to this Court's order, cannot be given effect to. It is a different matter that for all these years, these persons are working under the interim relief granted by this Court. The interim relief is only an interim measure and not a final relief. Interest of justice will be met in case this Special Civil Application on behalf of petitioners Nos. 1, 2, 6, 7, 10, 14, 19, 21, 22, 23, 26, 27, 28, 30, 31, 32, & 34 is disposed of with directions to the respondents to consider that in case the services of these petitioners have also been absorbed elsewhere during this period, then they may be continued in the service. In case they have not been absorbed elsewhere and there is no work for all these persons and they are

continued only as this Court has granted stay in their favour, then it shall be open to respondents to terminate their services in accordance with law. However, it is for the respondents to take into consideration the fact that these petitioners are in service for all these years, may be under the interim relief granted by this Court.

6. In the result, the Special Civil Application in respect of petitioners No. 1, 2, 6, 7, 10, 14, 19, 21, 22, 23, 26, 27, 28, 30, 31, 32, & 34 stands disposed of in aforesaid terms. Rule stands disposed of accordingly. No order as to costs.

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(sunil)